

April 6, 2012

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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Ex Parte Notice - Docket No. 10-90
Petition for Waiver of the 84% Reduction in Per-Line Support for
Windy City Cellular

Dear Ms. Dortch:

On April 4, 2012, Larry Mayes, President and CEO of Windy City Cellular, LLC ("WCC") and Andilea Weaver, its Chief Operations Officer, together with WCC's counsel, Monica Desai of Patton Boggs, LLP, met with Christine D. Kurth, Policy Director & Wireline Counsel to Commissioner McDowell.

WCC discussed the Petition for Waiver it filed on April 3rd seeking relief from the Commission's recent implementation of a flash-cut annual cap on per-line support for competitive eligible telecommunications carriers, which resulted in an 84% decline in funding for WCC. The parties also emphasized that due to the Commission's actions in implementing this new cap suddenly and without notice, WCC has only 12 weeks left before it must shut down operations (six months from January 1, 2012). Expeditious consideration of the Petition is critical. If the Bureau fails to act quickly, this will be tantamount to an order to shut down service, stranding consumers and critical public safety operations.

Since January 1, 2012, CETCs are capped annually at \$3,000 per line (\$250 per line, per month). This cap explicitly applies to CETCs that are serving remote areas in Alaska. Instead of a two-year delay in implementation, and a five-year phase-in, which the Commission adopted for other USF reforms for remote areas of Alaska, this change took place, without any warning, six weeks after the *USF/ICC Transformation Order* was

released.¹ WCC and its counsel discussed with Ms. Kurth that this rule change, which was hidden in footnote 880 of the order, is not only contrary to the Commission's approach with respect to other USF reforms for Alaska (an approach that the Commission characterized as affording greater certainty and stability for carriers in remote areas of Alaska until Mobility Fund Phase II support is available), but it also is in violation of the principles set forth in the National Broadband Plan. According to the National Broadband Plan, there were to be no flash-cuts in universal service reforms because "Policymakers must give service providers and investors time to adjust to a new regulatory regime."²

In WCC's case, because of the flash-cut implementation of the cap, WCC's universal service disbursement declined from \$136,344 in December 2011 to \$22,356 in January 2012. This sudden slash in funding has put the critical wireless service provided by WCC, the first in the area, in jeopardy. First, WCC has halted work on deployment of a new cell site in Clam Lagoon that would have afforded more coverage and redundancy for the wireless system, redundancy which is critical given the volatile climate in the Adak area. Second, and of more immediate impact, WCC was forced not to renew a contract with its backup provider of backhaul service. While cutting off this contract reduced WCC's backhaul costs, this change already has caused a service outage. On Monday of this week, wet snow and 60-100 mph winds forced the only remaining backhaul provider out of service, which meant that WCC customers had no long distance service, no Internet access, no email and no E-911 outside the downtown area. The only customers who could make and receive calls were those who could afford expensive satellite phones for basic phone service.

WCC emphasized that if a waiver of the annual cap is not expeditiously granted, the results will be catastrophic for the Adak area: (1) WCC will be forced to cease operating, causing some consumers to lose service with no terrestrial alternative, and roaming ability throughout the Adak area will be lost; (2) critical services, government functions, and public safety will be jeopardized; and (3) WCC will become insolvent, causing the loss of jobs in the Adak area.

¹ See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 26 FCC Rcd 17663, ¶ 14 (2011) ("USF/ICC Transformation Order").

² Federal Communications Commission, Omnibus Broadband Initiative, Connecting America: The National Broadband Plan, GN Docket No. 09-51, at 143 (2010) ("National Broadband Plan").

During the meeting, the parties discussed that the Adak area is one of the most remote and insular areas of the United States, located in an earthquake zone, in the vicinity of an active volcano, and frequented by tsunamis. As discussed in the waiver, WCC is the only carrier that provides voice service, wireless or wireline, throughout the entire Adak area, including the sea and Aleutian Wilderness where critical services, public safety operations and industries operate. There is only one police officer on the island, and he depends heavily on the service provided by WCC. Residents include former military personnel that stayed in Adak after the closure of a large Naval base, government researchers, experts that specialize in deactivating bombs, and employees of businesses in the fledgling economy on the island.

WCC discussed that if it is forced to shut down service, there are grave implications for critical government and public safety entities including the Marine Exchange (which operates one of the most important vessel tracking sites in Alaska), the USGS Albuquerque Seismological Laboratory, the Alaska Volcano Observatory, the U.S. Fish and Wildlife Service, and the City of Adak (which works with WCC for E911 service), as well as for government contractors, researchers, tourists, subsistence hunters and subsistence fisherman.

WCC recognizes that the Commission would like to move away from the identical support rule. Accordingly, the parties discussed that it requested a limited waiver to cover only the most basic operations until Mobility Fund Phase II support is available. If the Commission feels it is important for WCC to continue investing in redundant communications for the Adak area, and to afford the area's residents, businesses and government operations more reliable coverage in the face of severe and unpredictable climate, then it would be appropriate to delay the implementation of the flash cut and afford the same relief here that the Commission afforded in the *USF/ICC Transformation Order* for other universal service reforms for Alaska – a two-year delay and a five-year phased-in implementation. WCC would welcome this result and supports whatever alternate relief the Bureau can afford given the expedited timeframe required. However, the relief set forth in the Petition for Waiver is the absolute minimum WCC requires to continue operations with limited redundancy, and no way to avoid situations like Monday's outage.

If WCC becomes insolvent, its wireless service will cease and the wireline service provided by its affiliate, Adak Eagle Enterprises ("AEE"), will suffer. WCC and AEE each rely on the same small staff, which is shared between the companies. If WCC is forced to go out of business, AEE will not be able to afford the full cost of keeping shared employees.

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As discussed during the meeting, AEE, the only local exchange carrier in the Adak area, also will be filing a waiver request with respect to the *USF/ICC Transformation Order* in the coming weeks. Without such a waiver, AEE will be out of business by the end of the year and it will default on Rural Utilities Service loans which were granted, in part, on the FCC's determination that AEE is eligible for and would be receiving USF support at certain levels.

In summary, as discussed in the meeting, the immediate implementation of a \$3,000 per line annual cap on WCC, without notice or opportunity to plan, has already had immediate consequences for individuals and entities dependent on WCC service. Without an expeditious waiver, the results will be catastrophic to both WCC and to the Adak community.

Respectfully submitted,

/s/ Monica S. Desai

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